

Issue: Pollution Control Equipment (Exemption)

At the hearing, XXXXX, secretary/treasurer, testified about Taxpayer's production process and referenced its exhibits. Taxpayer Ex. No. 1 is an operating permit issued by the Illinois Environmental Protection Agency to Taxpayer on January 9, 1995 and Taxpayer Ex. Nos. 2 through 4 are prior

permits and applications, while Taxpayer Ex. No. 5 is a portion of the operating manual for its dust control system.

After considering this matter, I recommend the issue be resolved in favor of the Taxpayer.

FINDINGS OF FACT:

1. Taxpayer operated a rock quarry pit in Illinois during the audit period and produced various sizes of rocks and some asphalt road patch product. (Dept. Ex. No. 3)

2. The Department issued Notice of Tax Liability (NTL) No. XXXXX on December 30, 1994 for \$726.00 inclusive of tax and interest. (Dept. Ex. No. 5)

3. The Department issued NTL No. XXXXX on December 30, 1994 for \$1,210.00, inclusive of tax, penalty, and interest. (Dept. Ex. No. 4)

4. The EPA Operating Permit granted Taxpayer authorizes it to operate certain crushers at its rural Ava location and Paragraph 4 specifically states that the equipment at this facility shall not be operated without a dust suppression system. (Tr. p. 11; Taxpayer Ex. No. 1)

5. The foam upon which the Department assessed Use Tax is used by Taxpayer to attract and collect particles of dust in its crushing process, and then the foam and dust is carried away from the product by conveyor belts. (Tr. pp. 15-16; Taxpayer Ex. No. 5)

6. The foam is an integral component part of the dust suppressant control system used by Taxpayer.

CONCLUSIONS OF LAW: In administration of the exemption afforded pollution control facilities, the Department has promulgated 86 Admin. Code, ch. I, Sec. 130.335, and it is stated in pertinent part under Subsection (a):

Notwithstanding the fact that the sales may be at retail, sales of pollution control facilities are exempt from the Retailers'

Occupation Tax. This exemption extends to and includes the purchase of pollution control facilities by a contractor who retransfers the facilities to his customer in fulfillment of a contract to furnish such pollution control facilities to, and install them for, his customer. The phrase "pollution control facilities" means any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term "pollution" is defined in the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1001 et seq.), or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property. This exemption includes not only the pollution control equipment itself, but also replacement parts therefor, but does not extend to chemicals used in any such equipment, to fuel used in operating any such equipment nor to any other tangible personal property which may be used in some way in connection with such equipment, but which is not an integral part of the equipment itself.

The auditor assessed tax on the basis that the foam is a chemical and therefore excluded from exemption by the language of this regulation.

However, despite the limitation stated in the regulation, the Illinois Appellate Court has held that chemicals used in a pollution control facility can be exempt where the chemicals are an integral component for eliminating pollutants. *Wesko Plating v. Department of Revenue*, 222 Ill. App.3d 422, (1991).

Because I have already found that the foam chemicals are used herein by Taxpayer as an integral part of its dust suppression system, as required by the EPA, I conclude that the foam should be entitled to the exemption.

RECOMMENDATION: Based upon the aforementioned findings and conclusions, I recommend the Department cancel each NTL.

Respectfully Submitted,

Karl W. Betz
Administrative Law Judge